

**STUDENT DISCIPLINE  
CODE DISCUSSION PAPER  
JANUARY 2003**

**Vision Statement**

*Relationship to Mission and Strategic Plan*

Goal number five of the New Jersey State Board of Education's *Strategic Plan for Systemic Improvement of Education in New Jersey* sets forth that one of the aims of the department is "to ensure that policies and programs promulgated by the State Board and the Department of Education will positively impact the health, social and emotional well-being of all students, and to foster the delivery of state services which effectively address the needs of the whole child." The primary mission of the New Jersey Department of Education (NJDOE) is to provide leadership for a superior education by utilizing multiple and diverse paths to success for all children in New Jersey. The achievement of goal five and the fulfillment of NJDOE's mission is dependent, in part, upon the ability of schools to provide educational programs in safe, disciplined and secure environments.

Student discipline encompasses a range of issues, including the prevention (primary and secondary) and remediation (tertiary prevention) of disruptive student behavior, which occur on a continuum of seriousness. At one end of the continuum are minor infractions of school rules, such as violations of dress codes. In the middle of the continuum are interpersonal behaviors that are disruptive of social order, such as fighting, or that threaten safety and well-being, such as bullying behaviors that must be addressed before they escalate into more serious disruptive acts. At the other end of the continuum is extreme violence, such as the tragedy that occurred in Littleton, Colorado in 1999.

The recent history of violent tragedies in our schools and communities has strengthened the resolve of the NJDOE to support safe, disciplined learning environments. To achieve this end, the NJDOE continues to set forth policies and undertake programs and other initiatives that assist local district efforts in developing and maintaining safe and disciplined schools. According to the Justice Policy Institute's Children's Law Center report on school violence (Brooks, et. al. 2000), parents are becoming more afraid for the safety of their children in schools. For example, seven months after the tragic events in Littleton, Colorado, more than 60 percent of Americans reported that school safety was a great concern. The killing of children in schools by other children has transformed how we view and plan for school safety. Public perceptions of school safety are often molded by extensive media coverage of violent events, which sometimes does not include information on broader issues facing schools and the accomplishments made in the areas of school safety and student discipline.

*Relationship to Other Rules*

The proposed student discipline code will complement existing rules found at *N.J.A.C. 6A:16-5.1* and *N.J.A.C. 6A:14-2.8*. While parameters for disciplining special education students are set forth in *N.J.A.C. 6A:14-2.8*, (based on the federal Individuals with

Disabilities Education Act), there are no specific discipline rules for general education students. Existing rules at *N.J.A.C. 6A:16-5.1* require districts to develop and implement a code of student conduct that includes standards and rules defining behavioral expectations of students and governing student behavior. Additionally, locally determined district policies must address student responsibilities and rights; disciplinary sanctions and due process; and positive reinforcement for good conduct and academic success. However, no regulatory guidance based on existing case law and research-based practices is currently provided to school districts regarding minimum standards or parameters for these provisions.

### *Impact of Rules*

Implementing rules in this policy area will further support the academic progress of all students and assist schools in enhancing their capacities to establish and maintain safe, disciplined learning environments. The proposed student discipline rules will be aligned with and include references to rules at *N.J.A.C. 6A: 16-5* through 9, and special education rules at *N.J.A.C. 6A: 14-2.7-8*. A new subchapter at *N.J.A.C. 6A:16* should address, at a minimum, the following components:

- Definitions of suspension, removal and expulsion;
- School staff responsibilities regarding student discipline;
- Criteria and standards for different student discipline cases (*e.g.*, short- and long-term suspensions, removals and expulsions) and disciplinary sanctions that are related to the severity of offenses, the developmental ages of the student offenders, and that take into account students' histories of inappropriate behavior;
- Development and application of codes of student conduct; and
- Due process rights.

### **Need for Rules on Student Discipline**

The dated statutes, lack of rules, emergent case law and the limited guidance offered by the state for local policy making in this area have contributed to widespread discrepancies in student discipline practices throughout the state, which has prompted the proposal to establish rules regarding student discipline. The recommendation to establish rules on student discipline was made by public commenters during the review of the Programs to Support Student Development chapter of code (*N.J.A.C. 6A:16*) and by the department's internal working group on student discipline. Additionally, the same recommendation was set forth in the consensus report from NJDOE's student discipline policy forums, as described in the attached documents titled *Student Discipline Policies and Practices in New Jersey Schools: A Framework for Discussion* and *Final Report and Recommendations on Student Discipline for Consideration by the Department of Education*. The recommendation for statewide rules is supported by a review of student discipline rules in the states of New York, Connecticut, Maryland, Pennsylvania, Illinois, California and the District of Columbia.

Since the beginning of the Safe Schools Initiative in 1994, NJDOE has aggressively pursued a variety of policy and program strategies to address the problem of disruption and violence in schools. Below is a list of NJDOE's most recent efforts and planned initiatives to strengthen the assistance offered to school districts to increase school safety and reduce school violence.

#### Current Efforts and Initiatives

The following efforts and initiatives are described in the attached report titled *Violence, Vandalism and Substance Abuse Report in New Jersey Schools, 2000-2001*:

- Safe and Drug-Free Schools and Communities Act formula funds to local educational agencies;
- Safe Schools and Communities Violence Prevention and Response Pilot Plan Grant Program;
- Community Service Learning for Adjudicated Youth Grant Program;
- Intervention and Referral Services Initiative;
- Development and Dissemination of Alternative Education Regulations and Guidance;
- Establishment of an Alternative Education Advisory Panel;
- V-Free Initiative;
- Disaffected Youth Grant Program;
- Peer-to-Peer Transitions Project;
- Adoption of Core Curriculum Content Standards for Comprehensive Health and Physical Education;
- Uniform Memorandum of Agreement between Education and Law Enforcement Officials;
- Partnership with the Violence Institute of New Jersey;
- New Jersey Character Education Partnership Initiative;
- Project SERV;
- Disaster Fund for the Children of New Jersey;
- Education Law Enforcement Partnerships Grant Program;
- Student Support Services Planning and Development and Discipline Project;
- Collaboration with Mental Health Agencies and Student Support Personnel; and
- Development and dissemination of *A Guide for the Development of a Districtwide School Safety Plan*.

#### Other Current Initiatives

- Principals and Parents Promoting Youth Development and Discipline Initiative;
- Juvenile Offender Reentry Initiative;
- Gang Prevention and Intervention Initiative; and
- 21<sup>st</sup> Century Community Learning Center Grant Program.

## Planned Initiatives

Based on the recommendations from the student discipline policy forums, NJDOE plans to:

- Produce and/or revise guidance documents and publications to assist schools in the development, implementation and evaluation of sound disciplinary policies and practices;
- Provide school district staff with ongoing and/or expanded training and technical assistance in the area of student discipline;
- Increase interagency and intra-agency collaboration to address student discipline issues, pre-service training and teacher certification; and
- Convene the Alternative Education Advisory Panel on an as needed basis.

## Other Planned Initiatives

- Student Discipline Reform Demonstration Project; and
- Community Services for Suspended and Expelled Students Program.

## Research

Despite ongoing efforts to reduce behaviors that result in disciplinary sanctions, occurrences of certain types of disciplinary incidents have increased. Data collected by the NJDOE for the *New Jersey School Report Card* between the 1997-1998 and 1999-2000 school years illustrate that the number of student suspensions has increased from a total of 70,995 in the 1997-1998 school year to 86,289 in the 1999-2000 school year. There has also been an increase in the number of expulsions between the 1997-1998 and the 1999-2000 academic years. In 1997-1998, a total of 59 students were expelled. In 1999-2000, this number increased 57 percent to 103 expulsions. The number of suspensions and expulsions that are reported to the NJDOE for the purposes of the New Jersey School Report Card include suspensions and expulsions for all types of offenses and are not limited to those offenses specified in the Electronic Violence and Vandalism Reporting System (EVVRS).

According to the New Jersey Department of Education's report titled *Violence, Vandalism and Substance Abuse Report in New Jersey Schools*, for the 2000-2001 school year, a total of 24,973 incidents of violence, vandalism, weapons and substance abuse were reported by school districts. This number represents a 17 percent increase over the 1999-2000 school year. The following are major findings from the report:

- There were increases in three of the four major categories of reporting. The largest increases occurred in the violence category (26 percent), with the number of simple assaults increasing by 29 percent and fights by 19 percent;
- Incidents of substance abuse increased by 20 percent, with all three types of incidents (use, possession and distribution) increasing;

- The number of weapons incidents increased slightly (seven percent);
- Vandalism declined (four percent);
- Eighty-five percent of students who committed an offense received an out-of-school suspension;
- The number of suspensions increased by 15,771 in the 1999-2000 school year to a total increase of 20,326 in the 2000-2001 school year;
- The number of expulsions increased from 53 in the 1999-2000 school year to 65 in the 2000-2001 school year; and
- Removal to an alternative education program was used in only three percent of the cases.

The suspension and expulsion data that are reported the NJDOE by school districts using the EVVRS are for the purposes of the report titled *Violence, Vandalism and Substance Abuse Report in New Jersey Schools* and are limited to the offenses outlined in the EVVRS.

Research in the area of student discipline indicates that addressing student discipline using a continuum of strategies from prevention through remediation has a high likelihood of resulting in effective discipline policies and procedures that promote positive youth development. Preventive discipline involves strategies and practices that should be designed in support of the following goals: to promote the general welfare of students; to prevent the occurrence of discipline problems; to identify and assist students who exhibit disruptive or problem behaviors; and to provide supportive interventions and referral services to address the behaviors that result in disciplinary actions. The following are key elements of effective preventive discipline (Cotton, 1990):

- Commitment by district and school administration and staff to establish and maintain appropriate student behavior as a fundamental aspect of learning;
- High expectations for positive student behavior;
- Clear, broad-based rules developed with student input;
- Enforcing rules promptly, consistently and equitably;
- Positive, nurturing school climate where staff take a personal interest in students' personal goals;
- Supportive, visible administrators;
- Close community ties; and
- Delegation of discipline authority to teachers.

There is also a body of knowledge that provides guidance for the adoption of comprehensive discipline policies and practices that address discipline problems once they occur. Researchers have identified the following as effective in remediating student discipline problems:

- Punishment that is commensurate with the offenses committed, perceived by students as punishment and delivered in conjunction with support services;

- Counseling, which includes in-school suspension programs that provide support and guidance, as well as provide opportunities for building life skills that are appropriate to the individual circumstances;
- Contingency contracts, that are developed in collaboration with students and which specify sanctions when students violate the terms of the contracts; and
- Home-based reinforcement, where students are given rewards and sanctions at home, based on their behavior at school (Cotton and Savard, 1982).

Researchers have also identified the value of after school and/or out-of-school time programs and activities for children of all ages in the reduction of discipline problems and juvenile crime. According to the United States Department of Education, children living in communities with comprehensive out-of-school time programs are less likely to engage in risky behaviors, including premature and unprotected sex and alcohol and other drug use and are more likely to achieve academically.

Another critical factor in positive youth development and student discipline is significant and meaningful parental involvement. According to the Southwest Educational Development Laboratory (2002), students are more likely to earn higher grades, have better social skills and show improved behavior when their parents are actively involved in their educations and the school community.

#### *Prior Regulatory Framework*

The statutory and regulatory framework for student discipline in New Jersey has traditionally been minimal. In this context, NJDOE has offered limited guidance for local policy making. To date, NJDOE's primary guidance to schools in the area of student discipline has been addressed as one component of the 1995 publication titled *Student Codes of Conduct: A Guide to Policy Review and Code Development* (see attachment), and in the rules adopted by the State Board of Education in 2001 requiring local districts to establish codes of student conduct (*N.J.A.C. 16-5.1*). While the scope of guidance provided to schools has been nominal, broad parameters exist for student discipline as set forth under the following sources: federal and state constitutions, court rulings, laws, rules and NJDOE rulings and policies.

#### *Existing Legal Framework and Impediments*

At the federal and state levels, zero tolerance statutes [*i.e.*, No Child Left Behind Act of 2001 (P.L. 107-110, Title IV, Part A, Subpart 3, Section 4141), *N.J.S.A. 18A:37-2.2*, Assault with weapons; *N.J.S.A. 18A:37-8*, Zero Tolerance for Guns Act] have been adopted for the purposes of managing disciplinary offenses committed by students involving assaults or firearms on school property or at school-related events. Zero tolerance, as a standard for school discipline, has been intended to send the message that certain behaviors will result automatically in severe disciplinary consequences. However, a growing body of knowledge suggests that existing zero tolerance policies and practices may have more unintended and detrimental consequences than positive outcomes. In many cases, schools have failed to structure disciplinary consequences so that they are

graded according to the severity of offenses and the developmental ages of students, and so that they take into account students' histories of inappropriate behaviors. The failure to address unique circumstances of cases violates fundamental principles of fair and effective disciplinary policy and practice. While the establishment of some zero tolerance policies is important to ensure the safety of students, the manner in which they are applied should be re-examined in a context that encourages sound disciplinary policies and practices and that promotes positive youth development.

During the 2002 session of the New Jersey State Legislature, nine bills specifically related to student discipline issues were introduced. NJDOE provided an analysis of the impact each bill would have on the department and local educational agencies. While the proposed bills indicate that the Legislature considers student discipline an important issue and expects NJDOE to provide guidance in this area, the specific requirements of NJDOE in this regard remain unclear.

The New Jersey Constitution sets forth that "the Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." However, disciplinary sanctions, such as suspensions and expulsions, and the lack of clarity on due process rights and procedures for general education students can deprive children of their constitutional rights to a free, public education. The student's rights under the Constitution are the focus of several court cases and of deliberations by the Commissioner of Education and State Board of Education.

The Chancery Division of the Superior Court has recently considered the question of whether the State has a constitutional obligation to provide an alternative school program for a student who has been an adjudicated delinquent and placed on probation by the Family Part of the Superior Court, Chancery Division, even though the student has been expelled by his/her local school district [State of New Jersey in the Interest of G.S., 330 N.J. Super. 383 (Ch. Div. 2000)]. Stressing that the New Jersey Constitution placed the obligation to provide school instruction on the State and that the Legislature has implemented the constitutional requirement by providing for the public education of every child within the State, the court found that the constitutional obligation imposed on the State extends to juveniles in State facilities who have been adjudicated delinquents. While the court's decision in G.S. may provide guidance, it is a Chancery Division decision, rather than one rendered by the Appellate Division; therefore, it is not binding.

New Jersey statutes provide that "pupils in the public schools shall comply with the rules established in pursuance of law for the government of such schools, pursue the prescribed course of study and submit to the authority of the teachers and others in authority over them." (*N.J.S.A.* 18A: 37) The provisions of *N.J.S.A.* 18A:37-2 also set forth the causes for which a student can be suspended or expelled, which include: "continued and willful disobedience;" "open defiance of the authority of any teacher or person having the authority over him;" "physical assault upon another pupil;" and "knowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of intoxicating

liquor or controlled dangerous substances while on school premises.” Under the Discipline of Pupils statute, due process provisions are set forth only for assaults by students on educators and for offenses by students involving firearms. Statutes on corporal punishment at *N.J.S.A. 18A:6-1* stipulate that corporal punishment is not permitted upon any student attending a school or educational institution, however, a person employed in a school or educational setting may apply force, as is reasonable and necessary.

In addition, the Commissioner of Education and State Board of Education have issued rulings on school cases that govern student discipline. In a recent decision, the Commissioner of Education and the State Board of Education concluded that a student who is expelled from school must be provided with an alternative education program until he/she either graduates from high school or reaches his/her 19<sup>th</sup> birthday. Specifically, in July 2002, the State Board of Education concluded that a student who is expelled from school must be “afforded the opportunity to obtain a public education even when [the student] has been appropriately excluded from the regular education program. To conclude otherwise would not only be shortsighted, but would be an abrogation of [the Department of Education’s] responsibilities” for ensuring children in New Jersey are afforded a thorough and efficient education (*P.H. on behalf of minor child M.C. v. Board of Education of Bergenfield, et. al.*, decided by the State Board of Education, July 2, 2002). The State Board of Education also emphasized the need for school districts to provide educational services to students who present serious disciplinary problems. While school discipline rulings provide precedents for local decision making, the findings have not been coalesced into a unified set of guidance to school districts.

### *Conclusion*

The development of rules will bring order to the diverse collection of related court rulings, laws, rules and policy decisions. Further, the rules will provide the foundation for school districts to create and maintain safe, disciplined schools conducive to learning and to develop comprehensive policies covering the full continuum of student discipline issues, from prevention through remediation. Finally, the rules will provide school districts with parameters for implementing policies to ensure safe and disciplined schools conducive to learning.

### **Questions for Consideration in Regulating Student Discipline**

- How should suspension, removal and expulsion be defined?
- What should be the scope of discipline cases and disciplinary sanctions addressed in the rules?
- Which components of the regulations should prescribe district action?
- Which components of the regulations should provide global, general parameters for districts regarding student discipline?
- What criteria should be established for different student discipline cases (*e.g.*, short- and long-term suspensions, removals and expulsions) and disciplinary sanctions that are related to the severity of offenses, the developmental ages of the



student offenders and that take into account students' histories of inappropriate behaviors?

- Given the New Jersey State Board of Education Decision regarding P.H. on behalf of M.C. v. Bergenfield, et. al., under what conditions may a district expel students (i.e., students lose their constitutional right to an education in that district)?
- What standards and procedures should be implemented to ensure the due process rights of students and their families?
- Should truancy be addressed in the student discipline rules? If so, how?
- What educational program alternatives should be included in the student discipline code for students who are suspended, removed or expelled?
- Should alternative education placements (e.g., in-school suspension, home instruction, alternative education programs, per *N.J.A.C.* 16:6A-8, out-of-district placement, Saturday school) be made available to all students who are suspended, removed or expelled?
- Who should be held responsible for paying for alternative education placements of students who are expelled, removed or suspended?
- What parameters should be established for the content, development and application of student codes of conduct, beyond the existing rules found at *N.J.A.C.* 6A:16-5.1?
- What should be the role of parents and community members in the process of developing and maintaining disciplinary policies and procedures, beyond the existing requirements found at *N.J.A.C.* 6A:16-5.1?
- In what manner should districts be required to regularly report disciplinary actions to NJDOE?
- How will school districts be held accountable for developing and implementing sound student disciplinary policies and procedures?
- Will the department identify specific behaviors for which disciplinary sanctions are permitted? If so, which behaviors will be specified (e.g., bullying, intimidation, harassment, sexual assault)?
- If the department identifies specific behaviors warranting disciplinary sanctions, will the behaviors be limited to those identified in statute (e.g., firearms offenses, assaults with weapons offenses)?
- Should district boards of education be required to enroll students who are suspended, removed or expelled for disciplinary infractions other than those defined under *N.J.A.C.* 6A:16-5.5, Removal of students from general education for firearms offenses, and *N.J.A.C.* 6A:16-5.6, Removal of students from general education for assaults with weapons offenses, in alternative education programs, in accordance with the provisions of *N.J.A.C.* 6A:16-8?
- What guidance should be provided for school staff to fulfill their responsibilities in the prevention, intervention and remediation of student discipline problems?
- What guidance should be provided to help schools implement discipline policies equitably and without regard to protected classes (e.g., race, ethnicity, sexual orientation)?

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